Local government in Wisconsin /

LOCAL GOVERNMENT IN WISCONSIN.1

1 Annotated by the author.— Ed.

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The form of local government is of importance both as educating the whole people in public affairs and as affecting the purity and economy of local administration. The town-meeting in New England, and later in the whole Northwest, has performed a very important office in developing intelligence and interest in political affairs. Again, purity and economy in local administration depend upon the degree in which small communities control their own special financial concerns.

The same natural and social forces which developed the political tendencies of North and South so diversely, also produced in the two sections very different types of local government. And, by a curious train of events, these opposite systems have contended for mastery on the soil of Wisconsin.

There are in the United States three general types of local government—the town, the county, and the mixed system—represented respectively by New England, Virginia, and New York. The causes which developed such different institutions are to be found partly in the natural conditions of climate, soil, and industry, and partly in the character of the early colonists.

In Massachusetts,2 the town is the only local division for administrative purposes aside from the school district. The county is but an aggregation of towns for judicial purposes,

2 This brief outline of the local institutions of New England, Virginia and New York is introduced for the purpose of showing the significance of the changes in town and county

government that have taken place in Wisconsin. The materials for this preliminary sketch have been drawn mainly from the *Johns Hopkins University Studies in Historical and Political Science*.

503 without political functions. The people in town-meeting direct the policy of the small commonwealth, pass appropriations, and vote internal improvements. We have here our nearest approach to complete democracy. In this parliament every voter has a voice. Moreover, no villages are incorporated; and the varied concerns of the village, with its higher organization, give to the statutes of the small town-commonwealths of New England a much wider range than in those states where the village manages its own affairs independently of the town in general.

In Virginia, whose system has been extended throughout the South, the county is the only local administrative division. Both the Virginia county and the New England town were the direct outgrowths of the parish, to which the American immigrants had been accustomed in England. But in the South, population, owing to the large size of the tobacco, rice, or cotton plantations, was not dense enough to permit of any smaller division than the county. The large number of indentured servants and transported criminals, the progenitors of the “poor-white trash” of the Southern states, and later the growth of slavery, still further developed aristocratic tendencies in the South. The system of Massachusetts was democratic in form; that of Virginia, aristocratic. In Massachusetts, the voters in town-meeting formed the local parliament; in Virginia, the local legislature was appointed by the governor. As the commissioners were always men of the greatest wealth and influence in the community, the system, while republican in form, was essentially aristocratic. The power over local affairs was concentrated in the hands of a few.

To the reasons already mentioned for the wide divergence between the local governments of Massachusetts or Connecticut and those of Virginia, may be added another, most important of all, viz.: the different religious and political ideas that the Puritans and the Virginia colonists brought from England; and it is to be noted that the system of local

government adopted in the South did not differ materially from that which then existed in England. It was the departure of Massachusetts from the English model that produced 504 the wide divergence. It is the town-meeting that constitutes the fundamental and essential diversity between the towns of New England and the counties or parishes of the South. And the town-meeting was the outgrowth of the Puritans' religious ideas and church organization. The independent control of ecclesiastical affairs by the entire congregation,—in other words, democracy in the church,—led naturally to democracy in political institutions. The town grew up about church and school as a nucleus. The Southern gentleman prided himself on his broad acres, his numerous slaves, his fast horses, and fleet hounds; but the church and school were the centers of New England life. Thus the extremely popularized, local governments of New England were in part the result of the Puritan character; but also preserved and developed the religious and political tendencies of the Puritans, and in this way have formed a controlling force in our history that can hardly be overrated.

The third type of local government, the New York plan, combines the features of the systems existing in Massachusetts and Virginia. Control of local matters is divided between county and town. The town-meeting is retained; and, in so far, the plan resembles that of Massachusetts; but the county affairs are managed by a board consisting of one supervisor from each town; and in this the Virginia system is followed. Probably the origin of this mixed system is to be found chiefly in the character of the early colonists. It was the Dutch control that gave the bent to local government in New York, as the Puritan influence did in Massachusetts. The system of patroonships among the Dutch would have made any smaller division than the county impracticable. But the later English settlement, and the westerly migration from Massachusetts, counteracted the tendency which New York had shown toward the Virginia system, and finally developed local institutions of a mixed character.

The present Wisconsin was a part of Illinois before the admission of that territory into the Union. Illinois had long been a part of Virginia, whose claim was strengthened by the

conquest of the territory by George Rogers Clark, 505 in 1778. Hence, the population in 1818, confined to the southern half of the state, was mainly of Southern origin; and Southern influences controlled all political affairs and moulded the institutions. Thus the local institutions of the South were left as a heritage to Wisconsin, in common with Michigan, when severed from Illinois. In 1820, a law of Michigan Territory made it the duty of the governor to appoint for each county three commissioners, with the usual powers over local matters. The confirmation of this system in a Territory whose inhabitants were then mostly of northern birth, was probably due to the sparse settlement, which would have made the town organization impracticable. This law remained in force until 1827; but it was provided, in 1825, that the commissioners should be elected by the people of the county.

In 1822, the *borough* of Prairie du Chien was incorporated. There were to be elected a warden and two burgesses, corresponding to the president and trustees of our villages. The organization and powers of Prairie du Chien “borough” were essentially the same as those of villages in Wisconsin and other states. With the exception of Green Bay in 1838, this is the only instance of the use of the term “borough” in Wisconsin. These early laws were copied from the codes of Eastern states, and the one for the incorporation of Prairie du Chien was taken from the statutes of Connecticut and Ohio.1 Pennsylvania, New Jersey and Connecticut are the only states that have “boroughs.”2 And the name as applied here, doubtless came from the Connecticut laws. “The borough,” says the annalist of Prairie du Chien,3 “passed and repealed by-laws for about three years and stopped business in 1825.”

1 *Laws of Michigan Territory*, i., p. 236.

2 *Johns Hopkins University Studies*, No. 4, Fourth series, p. 8.

3 Durrie's *Annals of Prairie du Chien*, p. 7.

It was the influence of Governor Cass, who, born and bred in New Hampshire, was thoroughly imbued with New England ideas of local government, that led congress in 1827 to establish the New York system in Michigan Territory. The county commissioner system was abolished, and towns 506 were organized. Each town was to elect one supervisor, and the supervisors from all the towns in the county were collectively to form the county board. The towns had the more important business, e.g., control of highways, management of poor-houses, supervision of schools; but town accounts were audited and allowed by the county board.

As far as the present territory of Wisconsin is concerned, this law is of little account. The towns of Green Bay and St. Anthony, which included respectively the villages of Green Bay and Prairie du Chien, were then the only settled portions of Wisconsin, and hence the only parts having regular civil government. These towns were specially excepted from this law of 1827, and given a special organization better suited to the scant population. In each were to be elected three supervisors, who were to perform the duties of both town and county supervisors. This was virtually the old system. There appear to have been no towns organized in the present Wisconsin. under this law.

No important changes were made until after the organization of Wisconsin Territory in 1836. The discovery of lead in southwestern Wisconsin, in 1827, brought a large immigration, chiefly from Southern states, into that region during the next decade. Thus, in the new territory, the Southern people of the lead region formed the majority, and in 1837 established the system of county commissioners. This shows the strong sympathies of southwestern Wisconsin with Southern institutions.

In 1836 was passed a general law of village incorporation, and in 1838 towns were organized for judicial and police purposes, and given some minor power in regard to roads.

The Black Hawk expedition of 1832 had reported a rich farming region on the western shore of Lake Michigan. The land was purchased from the Indians, and an immense immigration immediately took place from New England and New York. This new element soon overbalanced the population of the lead region. A demand arose for the restoration of the more democratic form of local government, and in 1841 Northern influences and ideas once more triumphed.1

1 “An act to provide for the government of the several towns in Territory and for the revision of county government” (1841).

507 Numerous petitions for the change had been presented to the legislature, chiefly from citizens of the eastern counties, while petitions on the other side came from the lead region. Newspaper editorials denounced the existing system as “anti-democratic,” and as causing “heavy taxes and unequal and improper assessments.” “Each town,” said *The Milwaukee Sentinel* of September 8, 1840, “is most competent to judge of its own wants and regulate its own affairs, and if left to itself would better secure the interests of its inhabitants than a more remote, expensive, and to them, in a measure, irresponsible body.” These extracts sum up the chief grounds on which the county-commissioner plan was opposed. In some localities also, as in Washington county, the requirements of the increasing population burdened the three commissioners with an excessive amount of work in regard to roads, schools, valuation, and levy of taxes. A larger body became necessary to cope with the growth of local business. The continued attachment of the people of the lead region to the existing system was doubtless due solely to their Southern proclivities.

The new law provided that the people of each county might vote “for” or “against” county government. The vote was taken at the general election in 1841; and the returns, as reported to the legislature on February 3, 1842, show that the eastern counties, settled by Northern people, voted by large majorities against county government, while Green, Crawford and Iowa counties voted for the old system.1 In the spring of 1842, the change

was thus effected in the counties of Jefferson, Milwaukee, Walworth, Racine, Fond du Lac, Rock and Brown. Others made the change in succeeding years, so that when Wisconsin was admitted as a state, in 1848, all had adopted the town organization except the southwestern counties,—Grant, Green, La Fayette, Iowa and Sauk. In these the Southern influence still prevailed.

1 *House Jour., Wis. Terr. Legis.*, 1841, p. 224.

By the new state constitution, the legislature was required to establish “but one system of town and county government, which shall be as uniform as practicable.”2

2 *Const. of Wis.*, art. iv., sec. 23.

508 Accordingly, the New York system, substantially what we now have, was adopted, and the southwestern counties were obliged to re-organize on this plan.

Doubtless these would have retained the old system for many years but for the provision in the constitution requiring uniformity. The lead region must then have contained a large element, perhaps a majority, of citizens bred under Northern influences; but other causes than sectional prejudice or tradition were operating in favor of Southern methods of local government. It was urged, in numerous petitions to the legislature, that the system of three county commissioners involved less expense than that in which the governing body consisted of as many individuals as there were towns in the county. These petitions came from all portions of the state.

Section 22, article IV., of the constitution reads, in part, “The legislature may confer upon the boards of supervisors of the several counties” certain powers, thus implying that the “uniform” system established by the legislature should be the supervisor system. This term and that of commissioner had come to have definite and distinct meanings; and were in common usage, in legal signification, and in the intent of the framers of the constitution, not interchangeable. The one, by general and legal usage, designated the system of New York, in which the county board consists of supervisors from the towns; by the other was

understood the system of commissioners chosen for the entire county. The bill presented to the legislature provided that the “county board of supervisors should consist of three electors,” one to be elected in each of the three districts in which the county was to be divided. But in those counties that contained three or more assembly districts a supervisor was to be elected in each assembly district, and one additional supervisor for the county at large where there was an even number of assembly districts. This arrangement was made with the purpose of making the number of supervisors proportionate to the population of the respective counties; and, in consequence, to the amount of business in regard to roads, schools, taxes, etc., to be transacted in each. Each county 509 board would consist of at least three members, but the number in every county would be much smaller than under the existing system. As far as the rather limited business of the county is concerned, this was at least an approach to the spirit of the Virginia plan, with its concentration of power in the hands of a few. But the main purpose of the supporters of the new plan was to have a smaller body to transact county business, and at the same time to adjust the number composing it to the population and public business of each county. The system in which each town furnishes a member of the county board, making a comparatively large number in that body, was regarded as too cumbersome and expensive for the newer and more thinly settled counties of the state. It was thought that, in these at least, business would be transacted with greater efficiency and dispatch by a board of three or five members. On the other hand, in the older counties, where population was denser and more compact, and where local affairs had attained a great extent and a considerable complexity, a larger board, securing representation to each small locality, was deemed necessary. The extent of the financial and general interests involved in such counties demanded a large body to secure careful attention to the interests of each locality.

The people of these counties, therefore, regarded the new plan as a step backward; as a return to the spirit of institutions that the constitution had specially sought to avoid. The petitioners generally used the term “county commissioners” to express the desired system,

but the legislators who framed the law used the word “supervisors,” and thus evaded the plain and well-known intent of the constitution.

The opponents of the proposed plan accordingly argued that it was unconstitutional, and also urged its repugnance to the spirit and forms of democratic institutions. The minority report of the committee on town and county organization1 declared that the bill “contracts the representative privileges of the people and concentrates power in the hands of the few.” Further,—“Person and property are periled.

1 *Wis. Assembly Jour.*, 1861, p. 563.

510 It is a miserly policy that seeks to put money into the scale against popular rights.”

In accordance with a very general desire for a change in the county organization, the bill became a law. The town organization, however, remained intact; and as the town with us is more prominent than the county, having in charge the most important local interests, this change in the county organization was of relatively small consequence.

But it was of sufficient moment to secure repeated consideration on the part of succeeding legislatures; and from 1867 on, a series of successful attempts on the part of some counties to secure an organization similar in effect, if not in form, to that which had prevailed from 1849 to 1861. We may take the case of Washington county as an example. There, a special law of 1868 provided for a board of eight members, while its population entitled it to but three under the general law. The question was brought before the supreme court, which decided that the board of eight members was clearly illegal as being hostile to the uniformity in the different counties required by the constitution.1 But several other counties,2 in the two or three years previous to 1870, made similar changes in such manner as to conform to the constitutional provision; at least, the question of the legality of their organization was not brought before the supreme court.

1 State *ex rel*. Peck vs. Riordan and others, 24 Wis., 484.

2 Sheboygan, Green and Calumet.

In 1870, the supervisor system was restored. As in 1861, the unconstitutionality of the existing system, as evinced by the wording of the constitution, the debates in the convention, and the manner in which the law was put in force, was urged on one side, while cheapness was the main argument on the other. Representation of each town in the county board was thought necessary to prevent injustice toward any one town and to bring the governing body into closer relations of responsibility to the tax-payers. The transfer of local business from the legislature to the county boards and the consequent reduction of the length of the 511 sessions was also urged by the advocates of the change. The argument in regard to cost was very strong, but the spirit of republican government triumphed over the consideration of expense, and the New York system was re-established and has continued in operation to the present time.